

FILED

OCT 24 2012

UNITED STATES JUDICIAL PANEL

on
MULTIDISTRICT LITIGATION

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN RE: ASBESTOS PRODUCTS LIABILITY
LITIGATION (NO. VI)

3:11-4770JSW
MDL No. 875

(SEE ATTACHED SCHEDULE)

CONDITIONAL REMAND ORDER

The transferee court in this litigation has, in the actions on this conditional remand order: (1) severed all claims for punitive or exemplary damages; and (2) advised the Panel that coordinated or consolidated pretrial proceedings with respect to the remaining claims have been completed and that remand to the transferor court(s), as provided in 28 U.S.C. §1407(a), is appropriate.

IT IS THEREFORE ORDERED that all claims in the action(s) on this conditional remand order except the severed damages claims be remanded to its/their respective transferor court(s).

IT IS ALSO ORDERED that, pursuant to Rule 10.2 of the Rules of Procedure of the United States Judicial Panel on Multidistrict Litigation, the transmittal of this order to the transferee clerk for filing shall be stayed 7 days from the date of this order. If any party files a notice of opposition with the Clerk of the Panel within this 7-day period, the stay will be continued until further order of the Panel. This order does not become effective until it is filed in the office of the Clerk for the United States District Court for the Eastern District of Pennsylvania.

IT IS FURTHER ORDERED that, pursuant to Rule 10.4(a), the parties shall furnish the Clerk for the Eastern District of Pennsylvania with a stipulation or designation of the contents of the record to be remanded and all necessary copies of any pleadings or other matter filed so as to enable said Clerk to comply with the order of remand.

FOR THE PANEL:

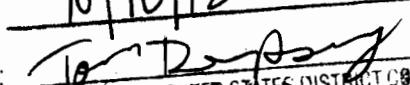

Jeffery N. Lüthi
Clerk of the Panel

Inasmuch as no objection is
pending at this time, the
stay is lifted.

Oct 10, 2012

CLERK'S OFFICE
UNITED STATES
JUDICIAL PANEL ON
MULTIDISTRICT LITIGATION

A TRUE COPY CERTIFIED TO FROM THE RECORD

DATED: 10/10/12
TEST: 
TOM DEASY
DEPUTY CLERK, UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

**IN RE: ASBESTOS PRODUCTS LIABILITY
LITIGATION (NO. VI)**

MDL No. 875

SCHEDULE FOR CRO

TRANSFeree	TRANSFERor	
<u>DIST DIV.</u>	<u>C.A.NO.</u>	<u>CASE CAPTION</u>
PAE 2	11-67717	CAN 3 11-04770
PAE 2	11-67711	CAN 4 11-04544

* – denotes that the civil action has been severed.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

FILED

SEP 27 2012

IN RE: ASBESTOS PRODUCTS : Consolidated Under
LIABILITY LITIGATION (No. VI) : MDL DOCKET NO. 875
: :
: Transferred from the Northern
BURKE, et al. : District of California,
: Case No. 11-04770
v. : :
: :
CBS CORP., et al. : E.D. PA No. 2:11-cv-67717

MICHAEL E. KUNZ, Clerk
By _____ Dep. Clerk

SUGGESTION OF REMAND

AND NOW, this **26th** day of **September, 2012**, it is hereby
ORDERED that, upon review of the above captioned case under MDL-
875 Administrative Order No. 18, No. 01-875 (E.D. Pa. April 30,
2009), ECF No. 6197, the Court finds that, as to the above-
captioned case:

a.) Plaintiff has complied with MDL-875 Administrative
Orders 12 and 12A (see the MDL 875 website's Administrative
Orders page, at <http://www.paed.uscourts.gov/mdl875d.asp>).

b.) Parties have completed their obligations under the Rule
16 order issued by the Court (see ECF No. 4).

c.) All discovery has been completed.

d.) The Court has adjudicated all outstanding motions,
including dispositive motions. Particularly relevant rulings
include:

i. No summary judgment motions were filed.

e.) Rule 18 settlement discussions have been exhausted at this time as to the remaining viable defendants.

f.) The Court finds that this case is prepared for trial without delay once on the transferor court's docket, subject to any trial-related motions in limine (including Daubert challenges).

g.) The remaining viable Defendants for trial are:

i. Metropolitan Life Insurance Company

h.) Any demand for punitive damages is severed, and claims for punitive or exemplary damages are retained by the MDL-875 Court. See Fed. R. Civ. P. 42(b).

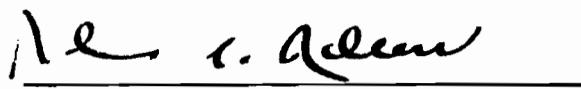
Accordingly, the Court **SUGGESTS** that the above-captioned case should be **REMANDED** to the United States District Court for the **Northern District of California** for resolution of all matters pending within this case except punitive damages.¹

Alternatively, parties in the below-listed cases have **seven (7) days** within which to consent to a trial before an Article III

¹ The Court finds that the issue of punitive damages must be resolved at a future date with regard to the entire MDL-875 action, and therefore any claims for punitive or exemplary damages are hereby **SEVERED** from this case and retained by the MDL-875 Court in the Eastern District of Pennsylvania. See In re Collins, 233 F.3d 809, 810 (3d Cir. 2000) ("It is responsible public policy to give priority to compensatory claims over exemplary punitive damage windfalls; this prudent conservation more than vindicates the Panel's decision to withhold punitive damage claims on remand."); see also In re Roberts, 178 F.3d 181 (3d Cir. 1999).

or Magistrate Judge in the Eastern District of Pennsylvania. In such an event, if consent is granted, a trial will be scheduled within sixty (60) days, on a date convenient to the parties in Philadelphia, Pennsylvania, and the Suggestion of Remand will be vacated.

AND IT IS SO ORDERED.


EDUARDO C. ROBRENO, J.

SUGGESTION OF REMAND MEMORANDUM

Updated September 5, 2012

To: Transferor Judge

From: Judge Eduardo C. Robreno, Presiding Judicial Officer, MDL 875

Re: Asbestos case that has been transferred to your court

Status of the case that has been transferred from the Eastern District of Pennsylvania

This case has been transferred back to the transferor court, from the MDL 875 Court in the Eastern District of Pennsylvania.

Cases that are remanded to transferor courts are ordinarily ready for trial, pursuant to this Court's Administrative Order No. 18 (see <http://www.paed.uscourts.gov/mdl875d.asp>).

Specific information regarding the history of a specific case while it was in the MDL 875 Court can be found in the Suggestion of Remand (above) that the MDL Court submitted to the Judicial Panel on Multidistrict Litigation in connection with its Order.

History of MDL 875, In re: Asbestos Products Liability Litigation

MDL 875, In re: Asbestos Products Liability Litigation, involves issues relating to personal injury damages caused by asbestos products. It currently consists of about 6,000 cases transferred by the Judicial Panel on Multidistrict Litigation, which has been transferring cases to the Eastern District of Pennsylvania since 1991. Each case typically consists of claims by multiple plaintiffs against multiple defendants. Since its inception, the litigation has involved more than 100,000 cases and up to ten million claims, including land-based and maritime claims ("MARDOC").

Beginning with Administrative Order No. 12 (see <http://www.paed.uscourts.gov/mdl875d.asp>) in 2008, the Court initiated an aggressive, pro-active policy to facilitate the processing of cases. The policy involves giving newly transferred cases scheduling orders; setting cases for settlement conferences; having motion hearings; and remanding trial-ready cases to transferor courts, or, in the alternative, holding trials in the Eastern District of Pennsylvania (if so requested by the parties).

Resources available for transferor courts on the MDL 875 website

More information about the history of MDL 875 can be found on the Eastern District of Pennsylvania's MDL 875 website at <http://www.paed.uscourts.gov/mdl875a.asp>. Additionally, all Administrative Orders issued in this litigation (including current Orders and those no longer in effect) can be found at <http://www.paed.uscourts.gov/mdl875d.asp>.

Also on the website is an Excel spreadsheet of all decisions issued by the Presiding Officer on

substantive and procedural matters since 2008 (see <http://www.paed.uscourts.gov/mdl875n.asp>). This spreadsheet is updated regularly, and it can be sorted by jurisdiction, case caption, subject matter, party name, etc. It is also word searchable. The MDL-875 Court intends this spreadsheet to be a helpful resource for transferor courts addressing issues similar to those already addressed by the MDL-875 Court.

Other options available to assist the Transferor Court with legal research include searchable databases created by LexisNexis and Westlaw. Directions on how to access these databases can be found on <http://www.paed.uscourts.gov/mdl875n.asp>.

Contact information for the MDL 875 Court

The MDL 875 Court is ready, willing and able to assist the transferor court with any matters relating to the transfer of the case or any substantive or procedural issues that may arise.

You may contact the Presiding Judicial Officer (Judge_Eduardo_Robreno@paed.uscourts.gov), the MDL 875 law clerk (Michele_Ventura@paed.uscourts.gov or (267) 299-7422), or the Clerk's Office ((267) 299-7012) for further assistance.

Intercircuit Assignment Committee

The Intercircuit Assignment Committee of the Judicial Conference, under the leadership of Judge J. Frederick Motz of the District of Maryland, can assist in the identification and assignment of a senior judge from another District who is ready, willing and able to preside over the trial of this case. If appropriate, please contact Judge Motz at Judge_J_Frederick_Motz@mdd.uscourts.gov or (410) 962-0782.

ASBESTOS,CA-N,MDL-875

**United States District Court
Eastern District of Pennsylvania (Philadelphia)
CIVIL DOCKET FOR CASE #: 2:11-cv-67717-ER
Internal Use Only**

BURKE et al v. CBS CORPORATION et al Date Filed: 10/13/2011
Assigned to: HONORABLE EDUARDO C. ROBRENO Jury Demand: Defendant
Case in other court: CALIFORNIA NORTHERN, 11-04770 Nature of Suit: 368 P.I. : Asbestos
Cause: 28:1332 Diversity-Asbestos Litigation Jurisdiction: Diversity

Plaintiff

DONNA BURKE
*AS WRONGFUL DEATH HEIR, AND
AS SUCCESSOR-IN-INTEREST TO*

represented by **ALAN R. BRAYTON**
BRAYTON, PURCELL LLP
222 RUSH LANDING RD
PO BOX 6169
NOVATO, CA 94945
415-898-1555
Email: abrayton@braytonlaw.com
ATTORNEY TO BE NOTICED

DAVID R. DONADIO
BRAYTON PURCELL LLP
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ATTORNEY TO BE NOTICED

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BRAYTON PURCELL LLP
222 RUSH LANDING RD
NOVATO, CA 94948
415-898-1555
Email: kchu@braytonlaw.com

Plaintiff

JAMES BURKE
DECEASED

represented by **ALAN R. BRAYTON**
(See above for address)

ATTORNEY TO BE NOTICED

DAVID R. DONADIO
(See above for address)
ATTORNEY TO BE NOTICED

KIMBERLY J.W.J. CHU
(See above for address)

Plaintiff

DEBRA ANN BURKE-CAPONE

represented by **ALAN R. BRAYTON**
(See above for address)
ATTORNEY TO BE NOTICED

DAVID R. DONADIO
(See above for address)
ATTORNEY TO BE NOTICED

KIMBERLY J.W.J. CHU
(See above for address)

Plaintiff

JODI LEIGH BURKE-DEMAREST

represented by **ALAN R. BRAYTON**
(See above for address)
ATTORNEY TO BE NOTICED

DAVID R. DONADIO
(See above for address)
ATTORNEY TO BE NOTICED

KIMBERLY J.W.J. CHU
(See above for address)

Plaintiff

AMANDA MARIE SPEES
LEGAL HEIR OF JAMES BURKE,
DECEASED

represented by **ALAN R. BRAYTON**
(See above for address)
ATTORNEY TO BE NOTICED

DAVID R. DONADIO
(See above for address)
ATTORNEY TO BE NOTICED

KIMBERLY J.W.J. CHU
(See above for address)

V.

Defendant

CBS CORPORATION

represented by **KEVIN DOUGLAS JAMISON**

TERMINATED: 07/05/2012
 formerly known as
 VIACOM INC.
 formerly known as
 WESTINGHOUSE ELECTRIC
 CORPORATION

POND NORTH LLP
 350 SOUTH GRAND AVE #3300
 LOS ANGELES, CA 90071
 213-617-6170
 Email: kjamison@pondnorth.com
 TERMINATED: 07/05/2012
 LEAD ATTORNEY

Defendant

**METROPOLITAN LIFE
 INSURANCE COMPANY**

represented by **SHEHZAD HASAN**
 STEPTOE & JOHNSON LLP
 750 SEVENTH AVE
 NEW YORK, NY 10019
 212-506-3900
 Email: tmurphy@steptoe.com
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
10/13/2011	1	TRANSFER ORDER NO. 1097 THAT THE CLERK OF COURT IS ORDERED TO INITIATE THE PROCEDURES FOR THE TRANSFER OF MDL 875 CASES FROM THE U.S.D.C. NORTHERN DISTRICT OF CALIFORNIA, IN ACCORDANCE WITH THE TERMS OF THIS COURT'S ADMINISTRATIVE ORDER NO. 11. ENTERED AND COPIES MAILED. (nmp,) (Entered: 10/14/2011)
10/13/2011	2	AMENDED ADMINISTRATIVE ORDER NO. 11 THAT THE MODIFICATIONS TO THE EXISTING PROCEDURES FOR THE PROCESSING OF CASES, DOCKETS, PLEADINGS AND ORDERS IN MDL 875 CASES ARE ADOPTED AS OUTLINED IN THIS ORDER, ETC. ENTERED AND COPIES MAILED. (nmp,) (Entered: 10/14/2011)
10/13/2011	3	NOTICE TO COUNSEL (nmp,) (Entered: 10/14/2011)
11/07/2011	4	ORDER THAT IN THE CASES LISTED IN EXHIBIT "A," ATTACHED, A STATUS AND SCHEDULING CONFERENCE WILL BE HELD ON 12/20/11 AT 2:00PM.. SIGNED BY HONORABLE EDUARDO C. ROBRENO ON 11/4/11. 11/7/11 ENTERED AND COPIES MAILED, E-MAILED (dp,) (Entered: 11/07/2011)
11/11/2011	5	Statement <i>OF CASE STATUS AS TO PLAINTIFF DONNA BURKE (ADMINISTRATIVE ORDER NO. 12)</i> by DONNA BURKE. (SLONIKER, GEOFF) (Entered: 11/11/2011)
11/28/2011	6	ANSWER to Complaint by CBS CORPORATION.(JAMISON, KEVIN) (Entered: 11/28/2011)
11/28/2011	7	Disclosure Statement Form pursuant to FRCP 7.1 with Certificate of Service by CBS CORPORATION.(JAMISON, KEVIN) (Entered: 11/28/2011)
11/30/2011	8	ANSWER to Complaint <i>and Certificate of Service</i> by METROPOLITAN

		LIFE INSURANCE COMPANY.(HASAN, SHEHZAD) (Entered: 11/30/2011)
11/30/2011	<u>9</u>	Disclosure Statement Form pursuant to FRCP 7.1 including MetLife, Inc. with Certificate of Service by METROPOLITAN LIFE INSURANCE COMPANY.(HASAN, SHEHZAD) (Entered: 11/30/2011)
12/16/2011	<u>10</u>	STATUS REPORT for December 20, 2011 Initial Status & Scheduling Conference by DONNA BURKE, JAMES BURKE, DEBRA ANN BURKE-CAPONE, JODI LEIGH BURKE-DEMAREST, AMANDA MARIE SPEES. (CHU, KIMBERLY) (Entered: 12/16/2011)
12/20/2011	<u>11</u>	AFFIDAVIT of Service by MANDY PODESTA re: served Summons and the Complaint with attached Exhibit, Notice of Tag Along. Certificate of Interested Persons, Declination re Magistrate, and the initial order of the court, and other papers from the clerk of the court for service upon defendants. <i>CBS Corporation (fka Viacom Inc., fka Westinghouse Electric Corporation)</i> upon VEVIN A. MCDLWAIH by PERSONAL SERVICE VIA CERTIFIED MAILING on 11/7/2011 (DONADIO, DAVID) (Entered: 12/20/2011)
12/20/2011	<u>12</u>	AFFIDAVIT of Service by MANDY PODESTA re: served served Summons and the Complaint with attached Exhibit, Notice of Tag Along. Certificate of Interested Persons, Declination re Magistrate, and the initial order of the court, and other papers from the clerk of the court for service upon defendants. <i>Metropolitan Life Insurance Company</i> upon F. GREEN by PERAONAL SERVICE VIA CERTIFIED MAIL on 11/7/2011 (DONADIO, DAVID) (Entered: 12/20/2011)
12/21/2011		(Court only) ***Set/Reset Deadlines: (DISCOVERY DUE BY 4/19/2012., MOTION FOR SUMMARY JUDGMENT DUE BY 8/6/2012.), Set/Reset Hearings:(PRE-REMAND HEARING SET FOR 10/23/2012 10:00 AM BEFORE HONORABLE EDUARDO C. ROBRENO.) (jl,) (Entered: 12/21/2011)
12/21/2011	<u>13</u>	SCHEDULING ORDER THAT ALL DISCOVERY MUST BE COMPLETED BY 4/19/12. SUMMARY JUDGMENT MOTION MUST BE FILED BY 8/6/12. A FINAL PRE-REMAND HEARING, INCLUDING ORAL ARGUMENT ON ALL OPPOSED SUMMARY JUDGMENT MOTIONS, WILL BE HELD ON 10/23/12 AT 10:00 A.M.; ETC.. SIGNED BY HONORABLE EDUARDO C. ROBRENO ON 12/20/11. 12/21/11 ENTERED AND COPIES MAILED, E-MAILED.(jl,) (Entered: 12/21/2011)
03/15/2012	<u>14</u>	ORDER THAT HEARINGS ON ALL PENDING OPPOSED DISPOSITIVE MOTIONS, INCLUDING MOTIONS FOR SUMMARY JUDGMENT, IN THIS CASE WILL BE HELD ON 9/25/12 AT 10:00 A.M.; ETC.. SIGNED BY HONORABLE EDUARDO C. ROBRENO ON 3/15/12. 3/15/12 ENTERED AND COPIES MAILED, E-MAILED.(jl,) (Entered: 03/15/2012)
05/22/2012	<u>15</u>	ORDER THAT A FINAL PRE-REMAND HEARING, INCLUDING ORAL ARGUMENT ON ALL OPPOSED SUMMARY JUDGMENT

		MOTIONS, WILL BE HELD ON 10/29/12 AT 10:00 A.M. IN COURTROOM 15A; ETC.. SIGNED BY HONORABLE EDUARDO C. ROBRENO ON 5/21/12. 5/22/12 ENTERED AND COPIES MAILED, E-MAILED..(jl,) (Entered: 05/22/2012)
06/21/2012	<u>16</u>	ORDER THAT A FINAL PRE-REMAND HEARING, INCLUDING ORAL ARGUMENT ON ALL OPPOSED SUMMARY JUDGMENT MOTIONS, WILL BE HELD ON 9/25/12 AT 10:00 IN COURTROOM 15A; ETC.. SIGNED BY HONORABLE EDUARDO C. ROBRENO ON 6/21/12. 6/21/12 ENTERED AND E-MAILED.(jl,) (Entered: 06/21/2012)
06/29/2012	<u>17</u>	NOTICE of Voluntary Dismissal by All Plaintiffs As To CBS CORPORATION, A DELAWARE CORPORATION, F/K/A VIACOM INC., SUCCESSOR BY MERGER TO CBS CORPORATION, A PENNSYLVANIA CORPORATION, F/K/A WESTINGHOUSE ELECTRIC CORPORATION, ONLY, WITH PREJUDICE. EACH PARTY TO BEAR ITS OWN FEES AND COSTS.(DONADIO, DAVID) (Entered: 06/29/2012)
07/05/2012	<u>18</u>	STIPULATION AND ORDER THAT DEFENDANT CBS CORPORATION IS DISMISSED FROM THIS ACTION WITH PREJUDICE. EACH PARTY TO BEAR ITS OWN FEES AND COSTS; ETC.. SIGNED BY HONORABLE EDUARDO C. ROBRENO ON 7/5/12. 7/5/12 ENTERED AND E-MAILED.(jl,) (Entered: 07/05/2012)
09/21/2012	<u>19</u>	STATUS REPORT <i>RE FINAL PRE-REMAND CONFERENCE ON SEPTEMBER 25, 2012</i> by DONNA BURKE, JAMES BURKE, DEBRA ANN BURKE-CAPONE, JODI LEIGH BURKE-DEMAREST, AMANDA MARIE SPEES. (CHU, KIMBERLY) (Entered: 09/21/2012)
09/27/2012	<u>20</u>	SUGGESTION OF REMAND ORDER THAT THE ABOVE CAPTIONED CASE SHOULD BE REMANDED TO THE USDC FOR THE NORTHERN DISTRICT OF CALIFORNIA FOR RESOLUTION OF ALL MATTERS PENDING WITHIN THIS CASE EXCEPT PUNITIVE DAMAGES. ALTERNATIVELY, PARTIES IN THE BELOW LISTED CASES HAVE SEVEN DAYS WITHIN WHICH TO CONSENT TO A TRIAL BEFORE AN ARTICLE III OR MAGISTRATE JUDGE IN THE EASTERN DISTRICT OF PENNSYLVANIA; ETC.. SIGNED BY HONORABLE EDUARDO C. ROBRENO ON 9/26/12. 9/28/12 ENTERED AND E-MAILED.(jl,) (Entered: 09/28/2012)
10/10/2012	<u>21</u>	Copy of Conditional Remand Order from the Judicial Panel on Multidistrict Litigation that all claims in the actions on this order except the severed damages claims be remanded to its respective transferor courts: CA-N 3:11-4770; 4:11-4544. (See Paper # 8741 in 01-md-875). (tjd) (Entered: 10/10/2012)
10/10/2012		Certified copy of Conditional Remand Order along with copy of Docket mailed to the Northern District of California. (tjd) (Entered: 10/10/2012)
10/10/2012		(Court only) ***Motions terminated; ***Deadlines terminated. (tjd) (Entered: 10/10/2012)

MICHAEL E. KUNZ
CLERK'S OFFICE
CLERK OF COURT

ROOM 2609
(267) 299-7018

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA
U.S. COURT HOUSE
601 MARKET STREET
PHILADELPHIA 19106-1797

RE: ASBESTOS PRODUCTS LIABILITY LITIGATION (VI) MDL 875
Conditional Remand Order

Dear Sir/Madam:

The enclosed **certified copy** of a Conditional Remand Order is being mailed to you. This order has been issued by the Judicial Panel on Multidistrict Litigation directing each of the cases on the attached list to be remanded back to your court. Pursuant to this order, please file this certified copy in your specific case and re-open the case in your court now that the Panel has returned jurisdiction of this case to you. Any questions please contact me at (267) 299-7018. Thank You and Have a Good Day.

Sincerely,

MICHAEL E. KUNZ
CLERK OF COURT



Tom Dempsey
MDL Docketing Clerk

Enclosure